

# Planning Lunches at Noon (PLAN) Monthly Webinar Services

Welcome to the PLAN Monthly Webinar Series!  
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# NAVIGATING THE PLANNING AND ZONING BOARD HANDBOOKS: WHAT'S NEW IN THE 2022 EDITION?

Noah D. Hodgetts, Principal Planner  
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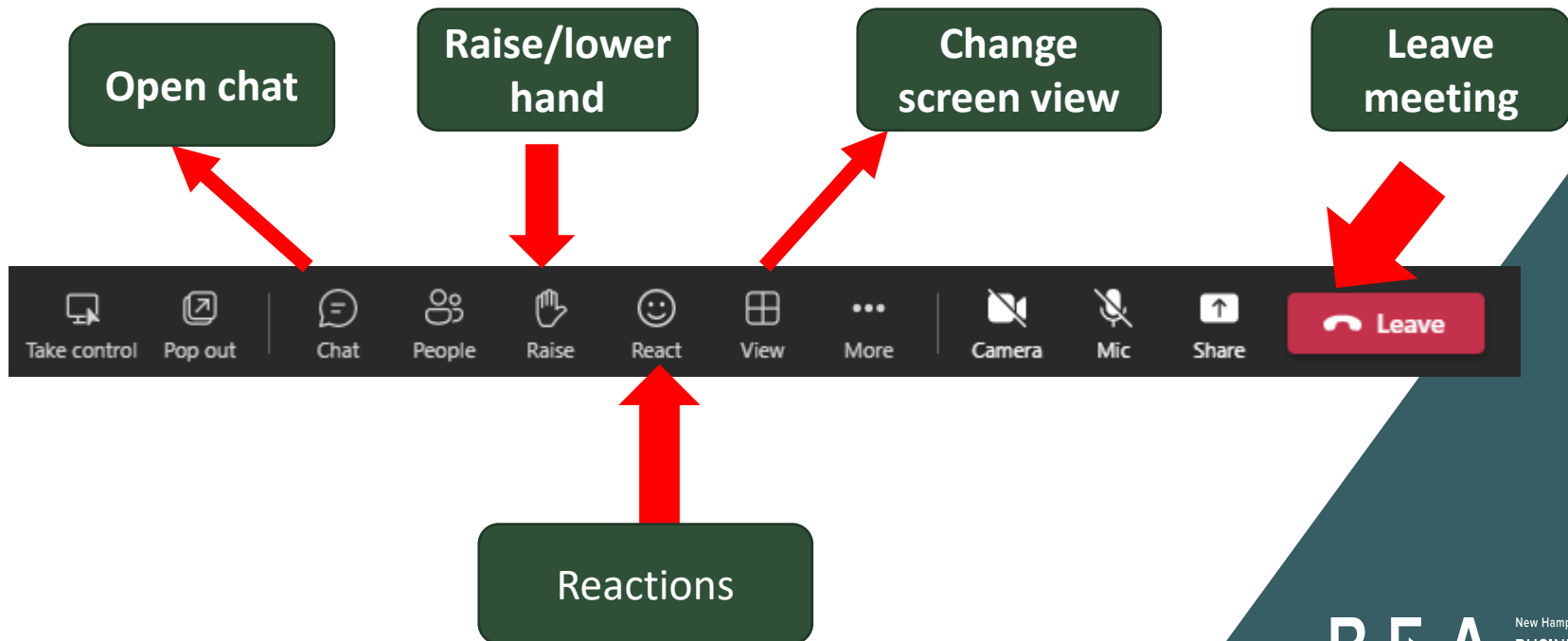
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February 16, 2023

# Webinar Logistics

Presentation then Question and Answer session

- ▶ Type questions into Chat box
- ▶ Raise hand
  
- ▶ We will be **recording** the presentation portion of this webinar.



# Agenda

- Overview of NH OPD Training Opportunities
- Overview of NH OPD Publications
- OPD *2022 Planning Board Handbook* Changes
- OPD *2022 Zoning Board Handbook* Changes
- Overview of *Federal and State Planning and Zoning Case Law for New Hampshire Local Officials.*
- Other Resources and Links
- Questions and Answers

# NH OPD Training Mandate

## RSA 673:3-a

**673:3-a Training.** – Any member of a zoning board of adjustment or planning board may complete training offered by the office of planning and development or another organization that provides similar training covering the processes, procedures, regulations, and statutes related to the board on which the member serves.

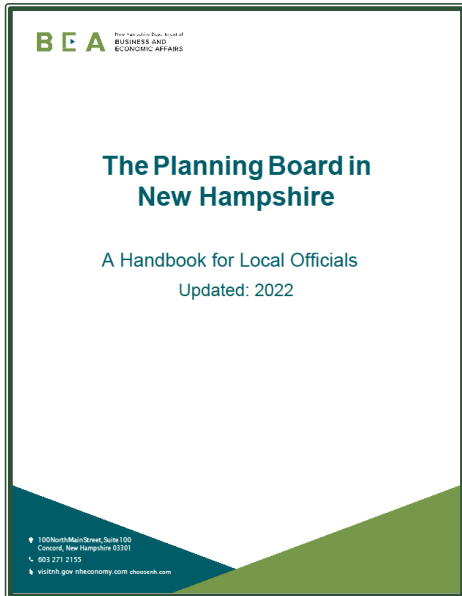
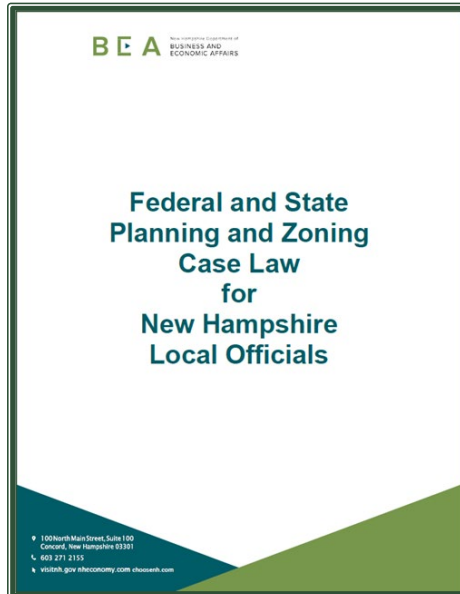
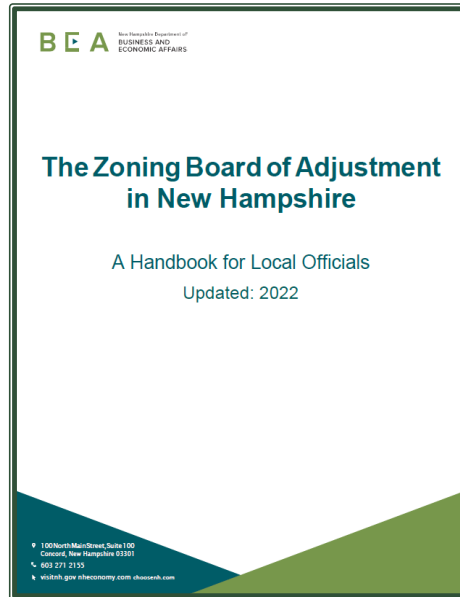
The office of planning and development shall develop standard self-training materials and corresponding tests for zoning boards of adjustment and planning boards which shall be provided to members free of charge.

The office of planning and development may provide other types of training, which may be designed in a variety of formats including, but not limited to, web-based, distance learning, or traditional classroom style. For purposes of this section, the term " member " includes regular and alternate members of zoning boards of adjustment and planning boards.

# NH OPD Training Opportunities

- ❑ Planning and Zoning Board Handbooks Publications
- ❑ Planning and Zoning Case Law Publication (used to be part of Zoning Board of Adjustment Handbook)
- ❑ Annual Conference
- ❑ Planning Lunches At Noon (**PLAN**) Webinar Series
- ❑ Training, Recordings and Information (**TRAIN**) Mini Learning Modules Series (upcoming)
- ❑ Floodplain Webinars and Training
- ❑ Planning & Zoning Board Tests

# NH OPD Publications



- ❑ Current Through The 2022 Legislative Session
- ❑ Summary of changes from 2021 handbook
- ❑ Legislative and routine changes
- ❑ Online only

# NH OPD Publications Format

an official NEW HAMPSHIRE government website

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### Planning Board Handbook

*The Planning Board in New Hampshire: A Handbook for Local Officials outlines the organization, functions and duties of Planning Boards in New Hampshire.*

This handbook is designed to serve as an introduction to the organization, powers, duties and procedures of planning boards in New Hampshire. It is a resource to acquaint board members and other interested persons with the basic responsibilities of the planning board and to suggest procedures by which the work of the board can be carried out in a fair and effective manner.

*The Planning Board in New Hampshire - A Handbook for Local Officials - Updated 2022*

- [Planning Board Handbook - Complete Document](#)
- [Summary of Changes - What has changed since the 2021 version](#)

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## SUMMARY OF CHANGES







The following table summarizes the substantial changes that have been made in this 2022 version of the *Planning Board in New Hampshire: A Handbook for Local Officials* since the 2021 Handbook update.

CHAPTER	IMPACTED PAGE #S	DESCRIPTION OF CHANGE
Global Changes	All	Year references on the cover page and in the footer. Updated links throughout.
Preface	iv	Addition of information about a separate document containing Planning and Zoning Case Law.  <a href="#">Starting in 2023 information on Planning and Zoning Case Law is published in a separate document titled Federal and State Planning and Zoning Case Law for New Hampshire Local Officials on NH OPD's website.</a>
Chapter I <i>Organization</i>	I-9	Legislative-related addition under "Planning Board Records" last bullet.  <a href="#">Specific written findings of fact that support an approval or disapproval.</a>










# NH OPD Planning Board Handbook Organization

## Chapters

- [Chapter I: Organization](#) 
- [Chapter II: Non-Regulatory Functions](#) 
- [Chapter III: Regulatory Functions](#) 
- [Chapter IV: Innovative Land Use Controls \(RSA 674:21\)](#) 
- [Chapter V: Application, Submission, and Review Procedures](#) 
- [Chapter VI: Working with Other Boards and Organizations](#) 

## Appendices

- [Appendix A: Sources of Assistance](#) 
- [Appendix B: Public Notices for Subdivision and Site Plan Review](#) 
- [Appendix C: Suggested Rules of Procedure for Planning Boards](#) 
- [Appendix D: Checklists](#) 
- [Appendix E: Criteria for Determining Regional Impact](#) 
- [Appendix F: Procedure for Application Review \(RSA 676:4\)](#) 
- [Appendix G: How To Be a Good Board Member](#) 

# NH OPD Planning Board Handbook 2022 Changes

CHAPTER	IMPACTED PAGE #S	DESCRIPTION OF CHANGE
Global Changes	All	Year references on the cover page and in the footer. Updated links throughout.
Preface	iv	<p>Addition of information about a separate document containing Planning and Zoning Case Law.</p> <p><u>Starting in 2023 information on Planning and Zoning Case Law is published in a separate document titled <i>Federal and State Planning and Zoning Case Law</i>.</u></p>
Chapter I <i>Organization</i>	I-9	<p>Legislative-related addition under “Planning Board Records” last bullet.</p> <p><u>Specific written findings of fact that support an approval or disapproval.</u></p>
Chapter IV <i>Innovative Land Use Controls (RSA 674:21)</i>	IV-23	<p>Legislative-related addition under “Workforce Housing” last paragraphs and box:</p> <p><u>Beginning July 1, 2023, incentives established for housing for older persons shall be deemed applicable to workforce housing development. If a municipality allows an increased density, reduced lot size, expedited approval, or other dimensional or procedural incentive under this section for the development of housing for older persons, as defined and regulated pursuant to RSA 354-A:15, VIII, it may allow the same incentive for the development of workforce housing as defined in RSA 674:58, IV.</u></p> <p><u>For municipalities that fail to make any adjustments to those incentives before July 1, 2023, those same incentives will automatically apply to developments of workforce housing under RSA 674:58, IV.</u></p>

# NH OPD Planning Board Handbook 2022 Changes

## Chapter V, Required Review Pg. V-5

***New Language:*** An application should not be accepted as complete by the planning board if it doesn't comply with local regulations unless a variance and/or waivers have been submitted and granted. If an applicant has provided all the necessary materials, studies, or reports required in your application form and/or checklist, then the application must be accepted as complete.

*Old language:* An application can be accepted as complete by the planning board even though it doesn't necessarily follow local regulations. If an applicant has provided all the necessary materials, studies, or reports required in your application form and/or checklist, then the application must be accepted as complete even though the planning board might know that it will probably be denied later for not following local regulations.

# NH OPD Planning Board Handbook 2022 Changes

## Chapter V, Required Review, Pgs V-5 & V-13

When a completed application has been accepted, the planning board has 65 days to approve, conditionally approve, or disapprove the application (unless the board has determined that the application is a development of regional impact, which gives the board an additional 30 days). If the planning board does not act on the application within the 65-day period, then the governing body {selectmen, city or town council} is required to approve the application. If warranted, the applicant and board should agree to an extension of the 65-day time frame. This 65-day period starts the day after the decision was made to accept the application as complete. (If the board meets on Tuesday night and accepts the application that night, then Wednesday is day 1, Thursday is day 2, etc. (RSA 21:35)).

If the planning board does not act on the application within the 65-day period (or 95 days in the case of developments of regional impact), then the governing body {selectmen, city or town council} is required to approve the application. If warranted, the applicant and board should agree to an extension of the 65-day time frame.

~~If the deadline is not met or if the applicant has not agreed to an extension of the time period, the board should disapprove the application.~~

- ~~▪ The planning board requests an extension of time from the board of selectmen or town/city council. Such an extension cannot exceed one additional 90-day period.~~

Please note that in 2022 the ability of the planning board to request an extension of time from the governing body for up to additional 90 days was eliminated by a legislative change. Now the law reads that in order for the planning board to have more than 65 days (or 95 days in the case of developments of regional impact) to act upon the application, **the applicant** must waive the statutorily specified time period and **the board and the applicant** must agree upon the time of the extension.

# NH OPD Planning Board Handbook 2022 Changes

## Chapter V, Review of Application: Step 7, Pg V-20

### Legislative-related revisions to “Step 7: Failure to Act (RSA 676:4, I(c))” numbered list:

- ~~1. The applicant requests assistance from the governing body (selectmen or town/city council).~~
- ~~2. The applicant requests the governing body to issue an order directing the planning board to act within 30 days.~~
- ~~3. 1. If the planning board fails to act on the application within the 65-day time period, then the selectmen or city council shall certify on the applicant’s application that the plat is approved. on the governing body’s order, the governing body must approve the application within 40 days of the order, unless it identifies in writing that the plan does not comply with local regulations.~~
- ~~4. 2. In the event that the governing body fails to certify approval of the plat upon the planning board’s failure to act within the required time period shall constitute grounds for the superior court, upon petition of the applicant, to issue an order approving the application. act, the applicant files a petition in superior court asking the court to determine whether the application should be approved.~~
- ~~5. 3. The superior court shall act upon such a petition within 30 days. The court issues an order approving the application if it finds that the application complies with the local regulations.~~

# NH OPD Planning Board Handbook 2022 Changes

## Chapter V, Required Review, Pg V-5 (continued)

RSA 674:75 Advance Pipeline Notification, makes any interstate natural gas transmission pipeline operator an abutter for the purposes of any development that occurs within 1,000 feet of the center point of the natural gas transmission pipeline. As of March 1, 2023, local land use boards in a municipality that is within 1,000 feet of the center point of a natural gas transmission pipeline shall also make National Pipeline Mapping System geospatial data maintained by the Pipeline and Hazardous Materials Safety Administration within the US Department of Transportation relative to the locations of pipelines available to developers.

## Appendix D: Checklists, Pg D-3

11. For new development applications located in whole or in part within 1,000 feet of the center point of a natural gas transmission pipeline that was constructed or operated prior to the development, proof of notification of the operator of the natural gas transmission pipeline of the planned development no later than the time of application for approval of the development, or 180 days prior to commencement of construction, whichever is earlier.

# NH OPD Planning Board Handbook 2022 Changes

## Chapter V, Filing Fees, Pg V-7

**Legislative-related addition under “Filing Fees” 1<sup>st</sup> paragraph and box:**

Any fee which a city or town imposes on an applicant pursuant to this title shall be published in a location accessible to the public during normal business hours. Any fee not published in accordance with this paragraph at the time an applicant submits an application shall be considered waived for purposes of that application. A city or town may comply with the requirements of this section by publicly posting a list of fees at the city or town hall or by publishing a list of fees on the city or town's Internet website.

A separate document labeled as “Notice of Land Use Board Fees under RSA 673:16, III” should be created that provides a complete listing of fees charged for land use board applicants before the planning board, zoning board of adjustment, historic district commission, building inspector, and building code board of appeals.

# NH OPD Planning Board Handbook 2022 Changes

## Chapter V, Review of Application; Step 6, Pg V-15

### Legislative-related deletion revisions and additions under “Review of Application: Step 6:

After the planning board is satisfied that it has addressed all potential concerns and issues associated with a subdivision or site plan application, the board is ready to make a decision. Under state statutes, the board shall take one of the following actions, which shall be based on findings of fact:

RSA 676:3, I requires that the applicant be given a final written decision (commonly referred to as a “Notice of Decision”) that documents the board’s decision to approve or disapprove the application. The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval. ~~If the application is not approved, the notification must clearly state reasons for the disapproval.~~



# NH OPD Planning Board Handbook 2022 Changes

## Chapter V, Review of Application; Step 6, Pg V-15 (con't)

In general, the board should be clear with identifying how the application meets (or doesn't meet) their regulations and check requirements when determining the findings of fact.

Findings of fact should not replace conditions of approval, they are in addition to conditions of approval.

For denials, in addition to consulting with town counsel, the planning board should consider and identify what are the things about the application that are preventing the board from saying yes.

These things should be anchored in the standards of the regulations, applications, and checklists. The findings of fact should be complete, so that (1) a reviewing court knows all of your reasons for your decision, and (2) the applicant has instructions if they want to try a second time. The board should always enlist their town counsel to aid in the issuance of the findings of fact.

# NH OPD Planning Board Handbook 2022 Changes

## Chapter V, Review of Application; Step 6, Pg V-16 (con't)

### Approval

The approval of an application by the planning board signifies that the proposal meets all applicable regulations. The degree to which a local land use board should make detailed findings of fact in support of an approval may vary based on the level of controversy associated with the application. **Findings of fact should not replace conditions of approval.**

### Disapproval

When denying an application, the planning board must vote to disapprove, specify the reasons for denial, and cite the sections of the regulations that were not satisfied. The reasons for denial must be clearly stated in the board's findings of fact, minutes, and other records of its actions.

# NH OPD Planning Board Handbook 2022 Changes

## Chapter V, Review of Application; Step 6, Pg V-16 (con't)

For denials, a local land use board should consider what are the things about the application that is preventing it from saying yes. These things should be anchored in the standards of the regulations and describe how the application does not meet the standards of the regulations; but may also include the exercise of independent judgment, experience, and knowledge of the area by the board.

The findings of fact should be complete, so that (1) a reviewing court knows all of your reasons, and (2) the applicant has instructions if they want to try a second time. The board should always enlist their town counsel to aid in the issuance of the findings of fact.

# NH OPD Planning Board Handbook 2022 Changes

## APPENDIX B: Public Notices for Subdivisions, Pg. B-5

Legislative-related addition to the Appendix B under “Notices of Planning Board Decisions” paragraph.

*(Once the Planning Board has held the public hearing and voted on the application, the final decision must be put in written form and placed on file in the Town offices and made available to the public within 5 business days. The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval. The Board is not required to notify the applicant individually except in the case of a denial, in which case the same time limit applies.)*

# NH OPD Planning Board Handbook 2022 Changes

## APPENDIX C: Suggested Rules of Procedure, Pg. B-5

Legislative-related revision of Appendix C under “Suggested Rules of Procedure”, Decisions section.

1. The Board shall render a written decision within 65 days of the date of acceptance of a completed application, subject to extension or waiver as provided in RSA 676:4. If the planning board does not act on the application within that 65-day time period (unless the board has determined that the application is a development of regional impact, which gives the board an additional 30 days), then the governing body {selectmen, city or town council} is required to approve the application.

2. The Board shall act to approve, conditionally approve, or disapprove.

3. Notice of decision will be made available for public inspection at (location) within 5 business days after the decision is made, as required in RSA 676:3. ~~If the application is disapproved, the Board shall provide the applicant with written reason for this disapproval.~~

4. The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval.

# NH OPD Planning Board Handbook 2022 Changes

## APPENDIX F: Procedure for Application Review, Pg. F-2

Legislative addition to the boxes for approval and disapproval:

If Approved:

Step 5

The Planning Board sends the Notice of Decision containing written findings of fact supporting the approval and files the plan with the County Register of Deeds.

If Disapproved:

The applicant is notified in writing within 5 business days of the reasons for disapproval. Notice of Decision must contain written findings of fact supporting the disapproval.

The applicant may:

- Revise and resubmit its application, or
- Appeal to Superior Court or Board of Adjustment

# NH OPD Planning Board Handbook 2022 Changes

## Chapter V, Review of Application: Waivers, Pg V-17

Explanatory revisions to the “Waivers (RSA 674:36, II(n) and RSA 674:44, III(e))” box:

While it is optional for waiver provisions to be included in subdivision regulations, it is recommended boards allow for waivers from subdivision regulations. Also, it is good practice to specify waiver requests are to be submitted in writing and clearly identify the section of the application, regulations, and/or checklist item in which relief is sought.

# NH OPD Planning Board Handbook 2022 Changes

## Chapter V, Appeals, Pg V-21

### Legislative-related addition to “Appeals” last paragraph:

In 2022 language was added (RSA 677:20) to allow the superior court to require a bond from the appealing party whenever an appeal is filed and allows the court to award attorney’s fees and costs to the prevailing party. However, attorney’s fees and costs are not allowed against the party appealing the land use board’s decision or the local land use board unless that person or body acted with gross negligence, in bad faith, or with malice in either filing the appeal or making the decision.



# NH OPD Zoning Board Handbook Organization

## Chapters

- [Chapter I: Organization](#) 
- [Chapter II: Powers and Duties of the Zoning Board of Adjustment](#) 
- [Chapter III: Procedures](#) 
- [Chapter IV: Appeal from a Board's Decision](#) 

## Appendices

- [Appendix A: Suggested Rules of Procedure for Local Boards of Adjustment](#) 
- [Appendix B: Instructions to Applicants Appealing to the Board of Adjustment](#) 
- [Appendix C: Suggested Forms](#) 
- [Appendix D: Simplex v. Newington Background Information](#) 

# NH OPD Zoning Board Handbook 2022 Changes

## Preface, Pg iii

**Changes related to taking out Appendix D to make it a separate document.**

This edition incorporates statutory changes enacted through the 2022 legislative session and additional supreme court decisions that further concern the authority of zoning boards of adjustment. Starting in 2022 information on Planning and Zoning Case Law (formally Appendix D) is published in a separate document titled *Federal and State Planning and Zoning Case Law for New Hampshire Local Officials*.

Throughout this book, state statutes are presented in 10 pt. Arial font and citations are provided for New Hampshire Supreme Court decisions. ~~See Appendix D of this book for summaries of case law relevant to boards of adjustment.~~

Information regarding this handbook, *Federal and State Planning and Zoning Case Law for New Hampshire Local Officials* document, as well as other related resources and publications are available from the NH OPD at:

[www.nh.gov/osi/planning/resources/publications.htm](http://www.nh.gov/osi/planning/resources/publications.htm)

# NH OPD Zoning Board Handbook 2022 Changes

## Chapter II, Special Exceptions, Pg. II-8

**Addition of new Supreme Court case to section “Special Exceptions” 2<sup>nd</sup> to last paragraph before the box.**

In *Avanru Development v. Town of Swanzy*, Case No. 2021-0015 (2022) the New Hampshire Supreme Court ruled that special exception provisions that permit additional uses in certain zoning districts in effect declare such special exception uses to be essentially desirable subject to a determination that the proposed location must be considered in light of special restrictions or conditions tailored to fit the unique problems which the use may present. The proposed special exception use in some places or in some respects might be incompatible with the uses permitted as of right in the particular district.

# NH OPD Zoning Board Handbook 2022 Changes

## Chapter II, Equitable Waiver of Dimensional Requirements, Pg. II-18

**Deletion of obsolete reference in section “Equitable Waiver of Dimensional Requirements” last paragraph.**

~~For an additional explanation of this power of the zoning board of adjustment, readers are encouraged to review the article in *Town and City Counsel* contained in the December 1996 edition of the New Hampshire Municipal Association magazine, *New Hampshire Town and City* by H. Bernard Waugh, Jr., Esq.~~

# NH OPD Zoning Board Handbook 2022 Changes

## Chapter III, Application: previous application, Pg. III-3

Court-related addition to the section “Application: previous application (the Fisher Doctrine), last paragraph:

In *Transfarmations, Inc. v. Town of Amberst*, Case No. 2021-0214 (2022) the New Hampshire Supreme Court reiterated that when a denial identifies a lack of information as the deficiency in the initial application, the court has held that a reapplication proposing a project substantially identical to the prior proposed project is materially different under *Fisher* if the new application provides the information missing from the prior application.

# NH OPD Zoning Board Handbook 2022 Changes

## Chapter III, Collection and Expenditure of Fees, Pg. III-10-11

Legislative-related addition to the section “Collection and Expenditure of Fees by the Board of Adjustment” last paragraph and box.

III. Any fee which a city or town imposes on an applicant pursuant to this title shall be published in a location accessible to the public during normal business hours. Any fee not published in accordance with this paragraph at the time an applicant submits an application shall be considered waived for purposes of that application. A city or town may comply with the requirements of this section by publicly posting a list of fees at the city or town hall or by publishing a list of fees on the city or town's Internet website.

A separate document labeled as “Notice of Land Use Board Fees under RSA 673:16, III” should be created that provides a complete listing of fees charged for land use board applicants before the planning board, zoning board of adjustment, historic district commission, building inspector, and building code board of appeals.

# NH OPD Zoning Board Handbook 2022 Changes

## Chapter III, Finding of Fact, Pg. III-14

### RSA 676:3, I Written Findings of Fact

- I. The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval. If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of all conditions necessary to obtain final approval.

# NH OPD Zoning Board Handbook 2022 Changes

## Chapter III, Finding of Fact, Pg. III-14

The degree to which a local land use board should make detailed findings of fact in support of an approval may vary based on the level of controversy associated with the application. In general, the board should be clear with identifying how the application meets their regulations and checklist requirements for the findings of fact portion of the approval.

**Findings of fact should not replace conditions of approval.**

For denials, a local land use board should consider what are the things about the application that is preventing it from saying yes. These things should be anchored in the standards of the regulations and describe how the application does not meet the standards of the regulations; but may also include the exercise of independent judgment, experience, and knowledge of the area by the board.

The findings of fact should be complete, so that (1) a reviewing court knows all of your reasons, and (2) the applicant has instructions if they want to try a second time. The board should always enlist their town counsel to aid in the issuance of the findings of fact.



# NH OPD Zoning Board Handbook 2022 Changes

## Chapter III, Decision, Pg. III-21

### RSA 676:3 Issuance of Decision

I. The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval. If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of all conditions necessary to obtain final approval.

~~Though not required by the statute~~ By statute, the board should also provide written findings of fact reasons for approval. The degree in which a local land use board should make detailed findings of fact in support of an approval may vary based on the level of controversy associated with the application. In general, the board should be clear with identifying how the application meets their regulation and checklist requirements for the findings of fact portion of the approval. The board would be better able to defend their position if appealed by an abutter, would instill public confidence and would allow future boards and interested parties a better understanding of how the decision was reached. When an application is approved with conditions, those conditions must be included in the written decision and included with or on any plat recorded to memorialize an approval as contained in RSA 676:3, III. Findings of fact should not replace conditions of approval.

# NH OPD Zoning Board Handbook 2022 Changes

## Chapter III, Decision, Pg. III-22 (con't)

For denials, a local land use board should consider what are the things about the application that is preventing it from saying yes. These things should be anchored in the standards of the regulations and describe how the application does not meet the standards of the regulations; but may also include the exercise of independent judgment, experience, and knowledge of the area by the board.

The findings of fact should be complete, so that (1) a reviewing court knows all of your reasons, and (2) the applicant has instructions if they want to try a second time. The board should always enlist their town counsel to aid in the issuance of the findings of fact. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, unless other grounds exist for disapproval.

# NH OPD Zoning Board Handbook 2022 Changes

## Appendix C, Suggested Forms, Pg. C-11

**Legislative-related addition to the Notice of Decision - Granted  
template before Conditions:**

Findings of fact:

Summary of the facts of the case discussed at the above public  
hearing:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

# NH OPD Zoning Board Handbook 2022 Changes

## Chapter III, Decision, Pg. III-20

### 674:33 90-Day Timeline

VIII. Upon receipt of any application for action pursuant to this section, the zoning board of adjustment shall begin formal consideration and shall approve or disapprove such application within 90 days of the date of receipt, provided that the applicant may waive this requirement and consent to such extension as may be mutually agreeable. If a zoning board of adjustment determines that it lacks sufficient information to make a final decision on an application and the applicant does not consent to an extension, the board may, in its discretion, deny the application without prejudice, in which case the applicant may submit a new application for the same or substantially similar request for relief.

RSA 674:33, Paragraph VIII stipulates that a upon receipt of an application a ZBA has 90 days to begin formal consideration and approve or disapprove of an application, unless the applicant agrees to an extension. If the ZBA determines that it lacks sufficient information to make a final decision on an application and the applicant does not consent to an extension, the board **may deny the application without prejudice**, allowing the applicant to reapply for the same relief.

# NH OPD Zoning Board Handbook 2022 Changes

## Appendix A, Decisions, Pg. A-4

Legislative-related addition to the paragraph “Decisions”.

**Decisions:** The board shall decide all cases within 90 days of receipt of application ~~days (30 recommended) of the close of the public hearing~~ and shall approve, approve with conditions, or deny ~~the appeal~~ the application. Notice of the decision will be made available for public inspection within 5 business days, as required by RSA 676:3, and will be sent to the applicant by certified mail. The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval. If the appeal is denied, the notice shall include the reasons therefore. The notice shall also be given to the planning board, the board of selectmen, town clerk, property tax assessor and other town officials as determined by the board.

# NH OPD Zoning Board Handbook 2022 Changes

## Chapter IV, Appeal from Board's Decision, Pg. IV-6

### RSA 677:20 Fee Shifting and Posting Bond

I. Whenever an appeal to the superior court is initiated under this chapter, the court may in its discretion require the person or persons appealing to file a bond with sufficient surety for such a sum as shall be fixed by the court to indemnify and save harmless the person or persons in whose favor the decision was rendered from damages and costs which he or she may sustain in case the decision being appealed is affirmed.

II. In any appeal initiated under this chapter the court may, subject to the provisions of this paragraph or any other provision of law, award attorney's fees and costs to the prevailing party. Costs and attorney's fees shall not be allowed against a local land use board unless it shall appear to the court that the board, in making the decision from which the appeal arose, acted with gross negligence, in bad faith, or with malice. Costs and attorney's fees shall not be allowed against the party appealing from the decision of a local land use board unless it shall appear to the court that said party acted in bad faith or with malice in appealing to court.

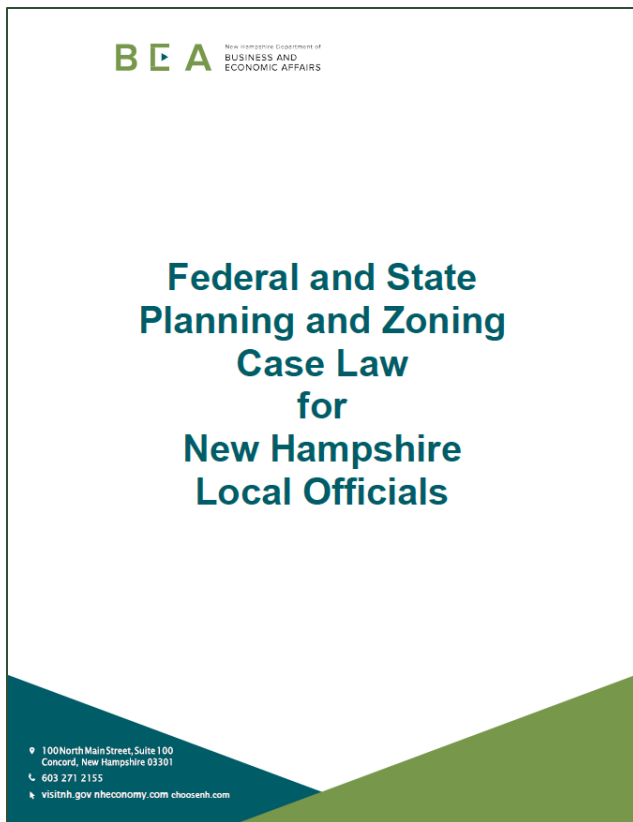
This statute allows the superior court to require a bond from the appealing party whenever an appeal is filed and allows the court to award attorney's fees and costs to the prevailing party. However, attorney's fees and costs are not allowed against the party appealing the land use board's decision or the local land use board unless that person or body acted with gross negligence, in bad faith, or with malice in either filing the appeal or making the decision.

# NH OPD Zoning Board Handbook 2022 Changes

## Chapter IV, Appeal from Board's Decision, Pg. IV-6

<p><b>Appendix D</b></p> <p><i><b>Zoning Board of Adjustment Case Law</b></i></p>	<p>D1-D69</p>	<p>Appendix D - Zoning Board of Adjustment Case Law removed from the ZBA Handbook to be made into a separate document titled Federal and State Planning and Zoning Case Law.</p>
<p><b>Appendix E</b></p> <p><i><b>Simplex. v. Newington Background Information</b></i></p>	<p>E1-E3</p>	<p>Appendix E - renamed Appendix D due to removal of Appendix D.</p>

# NH OPD Federal and State Planning and Zoning Case Law for New Hampshire Local Officials



- Contains summaries of cases relevant to New Hampshire planning boards and zoning boards of adjustment as compiled by NH OPD over time from various sources, many of which are cited throughout the text of this publication.
- These are summaries only. For a complete copy of the case, please review the full decision. Each case includes a citation to a source and a hyperlink, where available.



# Changes to Planning & Zoning Laws in 2022: *A Guide for Municipalities*

## Changes to Planning & Zoning Laws in 2022: *A Guide for Municipalities*



**BEA**

New Hampshire Department of  
BUSINESS AND  
ECONOMIC AFFAIRS

*A Joint Advisory of the New Hampshire Municipal Association and the New Hampshire Office of Planning and Development at the  
Department of Business and Economic Affairs*

July 2022

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In the fall of 2019, the Governor's Housing Task Force published a set of recommended legislative changes to address the housing shortage including additional training and tools for communities. These recommendations were incorporated into HB 1629 and HE 1632 in 2020, HB 556 in 2021, and SB 400 in 2022. After much negotiating, some provisions of SB 400, were attached to HB 1661 and became law.

The new law will have significant effects on how municipal land use boards conduct business. In addition, a new law was passed relative to local regulation of properties used primarily for religious purposes. That bill, HB 1021, is also summarized below.

### Summary of Changes Pursuant to HB 1661

- **Section 70: Training** – Replaces existing language on permissible training offered by the Office of Planning and Development (OPD) with new language which clarifies that any planning board or zoning board of adjustment (ZBA) member (including alternate members) may receive training from OPD or another organization, such as NHMA, which offers such training. Also requires OPD to develop specific, optional training materials and corresponding tests for planning board and ZBA members. **This change goes into effect on August 23, 2022.**
- **Section 71: Publication of Fees** – Requires that any fee which a city or town imposes on an applicant shall be published in a location accessible to the public during normal business hours or the fee shall be waived. A city or town may comply with the publication requirement by publicly posting a list of fees at the city or town hall or by publishing a list of fees on the city or town's internet website. A separate document labeled as "Notice of Land Use Board Fees" under RSA 673:16, III" should be created that provides a complete listing of fees charged for land use board applicants before the planning board, zoning board of adjustment, historic district commission, building inspector, and building code board of appeal. **This change goes into effect on August 23, 2022.**

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[Download Joint NHMA  
BEA "Changes to  
Planning & Zoning  
Laws in 2022: A  
Guide for  
Municipalities"](#)

# Links to Publications

- ❑ [The Planning Board in New Hampshire – A Handbook for Local Officials](#)
- ❑ [The Board of Adjustment in New Hampshire – A Handbook for Local Officials](#)
- ❑ [Federal and State Planning and Zoning Case Law for New Hampshire Local Officials](#)

# Planning Board Handbook Optional Test and Certificate

- ❑ 30-question Planning Board test was developed as an optional learning check based on the information contained in the current Planning Board Handbook, published by OPD.
- ❑ Individuals have the option to receive an emailed certificate showing that they passed the test by receiving a score of 65% or higher.
- ❑ To receive a certificate, individuals are required to submit their name and email address.
- ❑ The test is located on the [Planning Board Handbook webpage](#) of the OPD website and at the links below:
  - ▶ [Planning Board Test with No Certificate](#) (does not require name and email address)
  - ▶ [Planning Board Test with Certificate](#) (requires name and email address)

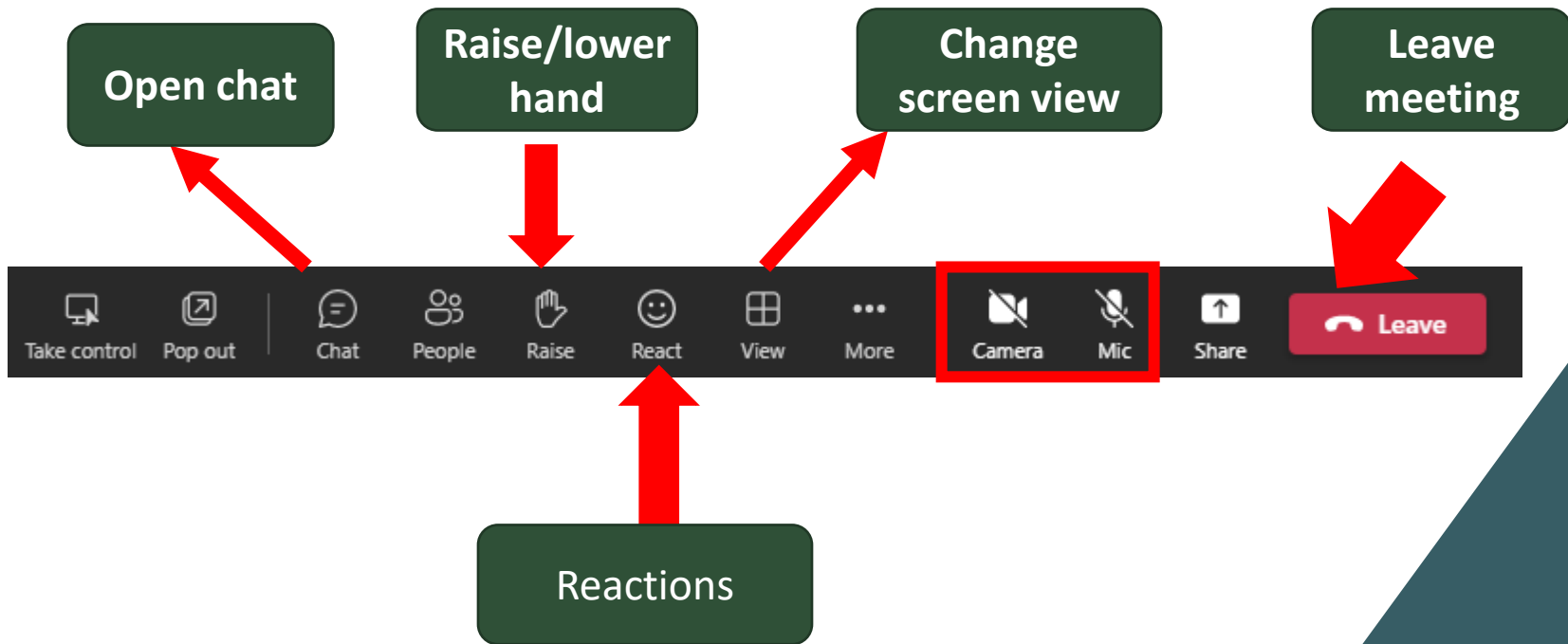
# Zoning Board Handbook

## Optional Test and Certificate

- ❑ 30-question Zoning Board test was developed as an optional learning check based on the information contained in the current Zoning Board of Adjustment Handbook, published by OPD.
- ❑ Individuals have the option to receive an emailed certificate showing that they passed the test by receiving a score of 65% or higher.
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  - ▶ [Zoning Board Test with No Certificate](#) (does not require name and email address)
  - ▶ [Zoning Board Test with Certificate](#) (requires name and email address)

# Questions and Answer Section

- If you would like to ask a question, please either raise your hand and unmute yourself or type your question in the Chat box. If on the phone, lines have been unmuted



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**THANK YOU**